

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harry Feigen	Team: Squad #13	CCRB Case #: 201506977	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 08/15/2015 4:20 AM	Location of Incident: 276 Martense Street; 78th Precinct stationhouse	Precinct: 67	18 Mo. SOL 2/15/2017	EO SOL 2/15/2017	
Date/Time CV Reported Wed, 08/19/2015 11:44 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 08/19/2015 11:44 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Mauvin Bute	00000	920064	067 PCT
2. POM Besnik Bojkovic	9214	954556	PBBS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Saul Delacruz	14948	956572	067 PCT
2. SGT Jessenia Tabb	04026	943317	067 PCT
3. POF Maria Voskoboynik	22535	951406	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Mauvin Bute	Abuse: In front of 276 Martense Street in Brooklyn, Lt. Mauvin Bute stopped the car in which § 87(2)(b) was an occupant.	
B.LT Mauvin Bute	Abuse: In front of 276 Martense Street in Brooklyn, Lt. Mauvin Bute detained § 87(2)(b)	
C.POM Besnik Bojkovic	Discourtesy: Inside of the 78th Precinct stationhouse, PO Besnik Bojkovic spoke discourteously to § 87(2)(b)	

Case Summary

On August 19, 2015, § 87(2)(b) filed this complaint with the CCRB by phone.

On August 15, 2015, at approximately 4:20 a.m., § 87(2)(b) was pulled over by Lt. Mauvin Bute, Sgt. Jessenia Tabb, and PO Maria Voskoboynik, all from the 67th Precinct, near the intersection of Martense Street and Nostrand Avenue in Brooklyn without having committed a crime or a traffic violation (**Allegation A**). Lt. Bute approached § 87(2)(b) vehicle and asked him if he had been drinking, to which § 87(2)(b) replied no. Lt. Bute told § 87(2)(b) he had to take a breathalyzer test, but § 87(2)(b) refused (**Allegation B**). Additional police units arrived on the scene during the stop, and PO Saul DeLaCruz placed § 87(2)(b) under arrest for refusing to take the breathalyzer test.

PO DeLaCruz and PO Besnick Bojkovic transported § 87(2)(b) to the 78th Precinct stationhouse, where a breathalyzer test was to be administered. While § 87(2)(b) was waiting in the stationhouse, he complained of his handcuffs being too tight, to which PO Bojkovic replied, “Shut the fuck up and I’ll think about taking these off” (**Allegation C**). A breathalyzer test was eventually administered, and § 87(2)(b) blew a 0.00%. He was subsequently released, and his arrest was voided.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) rejected mediation.
- As of October 30, 2015, § 87(2)(b) had not filed a notice of claim in regards to this incident.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilian and Officer CCRB Histories

- This is § 87(2)(b) second CCRB complaint. § 87(2)(b)
[REDACTED]
- Lt. Bute has been a member of service for 17 years. In case 201408836, a “premises entered and searched” allegation was substantiated against him. § 87(2)(g)
[REDACTED]
- PO Bojkovic has been a member of service for two years. He has no substantiated allegations on his record. § 87(2)(g)
[REDACTED]

Findings and Recommendations

Explanation of Subject Officer Identification

It is undisputed that the decisions to stop § 87(2)(b) vehicle and demand that he take a breathalyzer test were both made by Lt. Bute. § 87(2)(g)

§ 87(2)(b) alleged that the officer who spoke rudely to him inside of the 78th Precinct stationhouse was the driver of the van that transported § 87(2)(b) from the incident location to the stationhouse. § 87(2)(g)

Allegation A: Abuse of Authority – In front of 276 Martense Street in Brooklyn, Lt. Mauvin Bute stopped the car in which § 87(2)(b) was an occupant.

It is undisputed that Lt. Bute did not observe § 87(2)(b) commit any vehicle traffic law violations prior to stopping his vehicle. It is also undisputed that Lt. Bute's sole reason for pulling § 87(2)(b) vehicle over was his observation of § 87(2)(b) eyes, which he described as red, bloodshot, and watery. Lt. Bute explained this to § 87(2)(b) during the stop (as captured on the video provided by § 87(2)(b) linked below), stated it to PO Voskoboynik and Sgt. Tabb prior to pulling § 87(2)(b) over (02 Board Review and 03 Board Review, respectively), and affirmed it in his CCRB statement (04 Board Review).



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§ 87(2)(g)

§ 87(2)(b). While Lt. Bute stated in his CCRB interview that he was able to observe § 87(2)(b) eyes as they drove past each other in opposite directions because both vehicles were going over a speed bump at that time, and thus traveling only five miles per hour approximately, PO Voskoboynik stated that both vehicles were traveling approximately fifteen to twenty miles per hour when they passed each other, and she did not recall the officers traveling over a speed bump as they passed § 87(2)(b) Sgt. Tabb could not recall the speed the two vehicles were traveling at, but she did not mention anything about a speed bump in her interview § 87(2)(g)

Furthermore, neither Sgt. Tabb nor PO Voskoboynik observed § 87(2)(b) eyes as they drove past him, and § 87(2)(g)

§ 87(2)(b) it was nighttime. § 87(2)(b) eyes are shown in the video footage he provided of the stop, and they do not appear to be particularly bloodshot or red (05 Board Review). While they are only shown briefly in the video, a still frame taken from the video shows § 87(2)(b) eyes to be white at the time of the stop (06 Board Review). § 87(2)(g)



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In order for an officer to stop someone in their vehicle for a non-vehicle infraction, the officer must have reasonable suspicion that the stopped person committed a crime. People v. Peterson, 698 N.Y.S. 2d 777 (1999 – Sup. Ct. NyCty) (07 Board Review).

§ 87(2)(g)

Allegation B: Abuse of Authority – In front of 276 Martense Street in Brooklyn, Lt. Mauvin Bute detained § 87(2)(b)

It is undisputed that, after taking § 87(2)(b) license and registration and explaining that he was stopped due to his red and watery eyes, Lt. Bute told § 87(2)(b) he had to take a breathalyzer test. It is also undisputed that § 87(2)(b) argued loudly with Lt. Bute during the stop over Lt. Bute's reason for stopping him, and that there was an unopened beer bottle on the floor of the backseat of § 87(2)(b) vehicle. Lastly, it is undisputed that § 87(2)(b) blew a 0.00 on a breathalyzer test approximately five hours after being stopped by Lt. Bute. § 87(2)(g)

§ 87(2)(b) stated that he had not drunk any alcohol prior to being stopped by Lt. Bute, nor was he under the influence of any drugs, medication, or other intoxicant during the incident (08 Board Review). § 87(2)(b) explained that the unopened beer bottle in his vehicle belonged to a friend, to whom he had given a ride home immediately prior to being stopped.

Lt. Bute stated that in addition to observing § 87(2)(b) with red and watery eyes, he believed § 87(2)(b) to be intoxicated during the stop because of his rude and combative

demeanor, the unopened beer bottle in the car, and the presence of “the hint of the smell of marijuana” coming from § 87(2)(b) car.

Sgt. Tabb and PO Voskoboynik, who both stood near § 87(2)(b) vehicle during the stop, denied observing § 87(2)(b) eyes during the stop, smelling any odors coming from his vehicle, or making any observations about § 87(2)(b) which indicated he was intoxicated, other than him being upset and uncooperative with Lt. Bute’s demand that he take a breathalyzer test.

While PO DeLaCruz and PO Bojkovic both professed a belief that § 87(2)(b) was intoxicated at the time of the vehicle stop, they made this claim primarily based upon the same reasons as Lt. Bute; namely, § 87(2)(b) upset demeanor, and the redness of his eyes. Although PO DeLaCruz made the additional claim of smelling alcohol on § 87(2)(b) breath during the stop (09 Board Review), PO Bojkovic did not corroborate this (10 Board Review), nor did any other officer interviewed. Similarly, while PO Bojkovic stated that § 87(2)(b) speech was slightly slurred during the incident, no other officer made this claim, and PO DeLaCruz denied it. Furthermore, § 87(2)(b) does not slur his words in the video footage he provided of the incident.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

In order to mandate a breathalyzer test, an officer must have reasonable grounds based on the totality of the circumstances to believe that a person has been operating a motor vehicle while intoxicated. People v. Johnson, 134 Misc. 2d 474 (1987). (11 Board Review). NY Vehicle and Traffic Law § 1194 (2015). (12 Board Review and 13 Board Review).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C: Discourtesy – Inside of the 78th Precinct stationhouse, PO Besnick Bojkovic spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that as he waited in a holding cell in the 78th Precinct stationhouse to take the breathalyzer test, he was still in handcuffs. He alleged that when he complained to PO Bojkovic about his handcuffs being too tight, PO Bojkovic replied, “Shut the fuck up and I’ll think about taking these off.” While § 87(2)(b) stated during his CCRB intake call that he was held in handcuffs in the 78th Precinct stationhouse holding cell, he did not allege a discourteous remark in his initial complaint (14 Board Review).

§ 87(2)(b) who was identified as a potential witness by the 78th Precinct prisoner holding pen roster, recalled a black male in an adjacent cell who was complaining about his handcuffs being too tight. § 87(2)(b) stated that the officers ignored the other prisoner’s complaints, but he did not recall any officer’s specific response to the prisoner. § 87(2)(b) did not recall any officer cursing at the prisoner (15 Board Review).

§ 87(2)(b) another witness identified by the holding pen roster, also recalled a black male prisoner complaining about his handcuffs in the cell area, but § 87(2)(b) did not recall any officer’s specific response to these complaints, nor did she recall hearing any officer cursing at the prisoner (16 Board Review).

§ 87(2)(b) and § 87(2)(b) were also identified as potential witnesses to the allegation. § 87(2)(b) was uncooperative with the investigation, however, and neither § 87(2)(b) nor § 87(2)(b) responded to the investigation’s contact attempts.

PO Bojkovic denied that § 87(2)(b) complained of his handcuffs being too tight in the stationhouse, and he denied making the alleged remark, or any similarly discourteous comments to § 87(2)(b). PO DeLaCruz did not recall § 87(2)(b) complaints, nor did he recall PO Bojkovic making the alleged comment.

§ 87(2)(g)

§ 87(2)(g)

Squad: 13

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date